

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0171P

Corporate Income Tax
For Calendar Year 1999

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ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayer protests the penalty assessed.

STATEMENT OF FACTS

The taxpayer filed its Indiana income tax return with remittance after the due date and was assessed a late payment penalty. During the tax year, the taxpayer only paid 11% of its total tax liability through estimated payments.

The taxpayer filed a letter of protest and a letter of supplemental information requesting that the penalty be waived. The taxpayer stated that during 1999 it underwent a significant reorganization involving several acquisitions and mergers. Additionally, during the reorganization the sole person responsible for tax reporting terminated employment with the taxpayer.

According to the taxpayer, upon realizing that its Indiana income tax return was due, it promptly completed the return and paid the tax due. The taxpayer states that there was no willful noncompliance with the laws of Indiana.

DISCUSSION

Administrative Rule 45 IAC 15-11-2 (b) states the following:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary

reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer is advised that the penalty being imposed is not for willful noncompliance with the law (fraud) but for negligence.¹ The Department acknowledges the confusion created by corporate reorganization and the loss of vital personnel. However, the possibility of such events should have been anticipated by the taxpayer; procedures should have been in place to assure that tax obligations were timely paid. The taxpayer has not established that its failure to timely pay the full amount of tax due was due to reasonable cause and not due to negligence.

FINDING

The taxpayer's protest is denied.

CWH/RAW/JMS 023005

¹ The statutory imposition of the penalty for fraud may be found at IC 6-8.1-10-4.